

5003. Misbranding of crab meat. U. S. v. 26 Cases of Crab Meat. Consent decree of condemnation. Product ordered released under bond for relabeling. (F. D. C. Nos. 9047, 9048. Sample Nos. 17426-F, 17427-F.)

On or about December 29, 1942, the United States attorney for the Southern District of New York filed a libel against 26 cases, each containing 96 cans, of crab meat at New York City, N. Y., alleging that the article had been shipped in interstate commerce on or about May 25, 1942, by P. V. Bright & Co., from Chicago, Ill.; and charging that it was misbranded. The article was labeled in part: "King Brand Fancy Quality Deep Sea Crab Meat * * * Distributors Bjelland, Lange & Co. Inc., New York, N. Y. U.S.A. Packed in Siberia, Soviet Russia."

The article was alleged to be misbranded in that the statement "Packed in Siberia, Soviet Russia" was false and misleading as the said article was packed in Japan.

On January 19, 1943, the Bjelland, Lange & Co. Inc., claimants, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and the product was ordered released under bond for relabeling by placing a sticker label of pronounced contrast on the background, the sticker to contain the legend "Packed in Japan" over the then present label "Packed in Siberia, Soviet Russia," the relabeling to be conducted under the supervision of the Food and Drug Administration.

FLAVORS AND SPICES

5004. Poppy Seed. Suit for a declaratory judgment. Helco Products Co., Inc. v. Paul V. McNutt, Federal Security Administrator, and Francis Biddle, Attorney General. Complaint dismissed. Judgment of lower court affirmed by Court of Appeals.

On March 5, 1942, Helco Products Co., Inc., New York, N. Y., filed in the District Court of the United States for the District of Columbia a suit for a declaratory judgment with which was joined an application for a preliminary injunction against Paul V. McNutt, Federal Security Administrator, demanding: (1) That the court declare that the Federal Food, Drug, and Cosmetic Act does not prohibit the interstate shipment of artificially colored poppy seed properly labeled. (2) That the court grant an injunction pendente lite restraining the defendant and his agents from instituting or recommending the institution of legal proceedings, either civil or criminal, against the plaintiff in its shipment of artificially colored poppy seed.

On June 23, 1942, the plaintiff filed an amended suit joining Francis Biddle, Attorney General of the United States, as defendant. On June 30, 1942, a motion to dismiss the plaintiff's amended complaint was filed on behalf of the defendants. The motion to dismiss was argued on June 30, 1942, and on July 1, 1942, the court ordered the amended complaint dismissed.

Notice of appeal was filed by the plaintiff on July 17, 1942. On July 28, 1943, the United States Court of Appeals for the District of Columbia affirmed the decision of the lower court, handing down the following opinion:

MILLER, *Associate Justice*: "Appellant sued in the District Court for a declaratory judgment against the Federal Security Administrator and the Attorney General. The case stated in its complaint is, in substance, as follows: Appellant intends to ship in interstate commerce white poppy seeds, for use on bakery products, to which it intends to add a blue color by means of a harmless vegetable dye; the seed would be sold in bulk packages labeled with an explanation of the manner of coloring; the reason for the addition of the color is that blue poppy seeds are more in demand, but, on account of wartime restrictions of importations, are unavailable; appellant, through its attorney explained its intentions in a letter to the Food and Drug Administration of the Federal Security Agency, and explained why it did not consider its proposed business activities to be at variance with the provisions of the Federal Food, Drug, and Cosmetic Act; it requested an expression of opinion from the Food and Drug Administration as to the legality of the interstate shipment of such a food product, and was advised by Walter G. Campbell, Commissioner of Food and Drugs, that, in the opinion of the Food and Drug Administration, such an artificially colored product would be adulterated within the meaning of Section 402 (b) of the Federal Food, Drug, and Cosmetic Act.¹ Appellant alleged, also, in its complaint in the District Court, that on June 3, 1942 it sent to the Attorney General of the United States, the following telegram: 'Our client, The Helco Products Company Inc., 111 Hudson Street New York desires to ship white poppy seed dyed blue with a harmless vegetable dye in interstate commerce. J K Kirk

¹ In support of this allegation appellant submitted, as an exhibit, a letter from the Commissioner of Food and Drugs which contains the following paragraph: "It is therefore our considered opinion that the interstate shipment of this artificially colored product under any labeling would result in an adulterated product within the meaning of section 402(b) of the Federal Food, Drug and Cosmetic Act, and that this violation could not be corrected by any form of labeling."